



Paper No. 6

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OFFICE OF PETITIONS

In re Application of
KENNETH E. JOHNSON
Application No. 10/086,224
Filed: February 23, 2002
Title: PORTABLE BOW PRESS FOR
COMPOUND BOWS WITH EITHER TWO PIECE
LIMBS OR ONE PIECE LIMBS

ON PETITION

This is a decision on the petition to revive under
37 CFR 1.137(a), filed December 18, 2003.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration of this decision must be
submitted within **TWO (2) MONTHS** from the mail date of this
decision. The reconsideration request should include a cover
letter entitled "Renewed Petition under 37 CFR 1.137(a)".
Extensions of time under 37 CFR 1.136(a) are permitted.

The above-identified application became abandoned for failure to
timely file a reply in response to the Notice to File Missing
Parts of Nonprovisional Application mailed March 20, 2002, which
set a shortened statutory period for reply of two (2) months. No
extensions of time under 37 CFR 1.136(a) were obtained. No reply
having been received, the above identified application became
abandoned on May 21, 2002. A Notice of Abandonment was mailed on
December 4, 2003.

A grantable petition under 37 CFR 1.137(a) must be accompanied
by: (1) the reply required to the outstanding Office action or
notice, unless previously filed; (2) the petition fee set forth
in 37 CFR 1.17(1); and (3) a showing to the satisfaction of the
Commissioner that the entire delay in filing the required reply
from the due date for the reply until the filing of a grantable
petition pursuant to this paragraph was unavoidable. The present
petition lacks items (3) and (1).

Decisions on reviving abandoned applications on the basis of
"unavoidable" delay have adopted the reasonably prudent person
standard in determining if the delay was unavoidable: "The word
'unavoidable' ... is applicable to ordinary human affairs, and
requires no more or greater care or diligence than is generally

used and observed by prudent and careful men in relation to their most important business."¹

Moreover, delay resulting from the lack of knowledge or improper application of the patent statutes, rules of practice or the Manual of Patent Examining Procedure, however, does not constitute "unavoidable" delay.²

In the present petition, petitioner asserts that the delay was caused by nonreceipt of the Notice to File Missing Parts of Nonprovisional Application of March 20, 2002. A review of the written record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to the petitioner at the address of record as of March 20, 2002. This presumption may be overcome by a verified showing that the Notice was not in fact received.

With regards to item (3), petitioner has not met the showing required to establish nonreceipt of an Office action. To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the **docket record** where the nonreceived Office action would have been entered had it been received and docketed.³ A proper docket report consists of a "docket record **where the nonreceived Office action would have been entered had it been received and docketed.**"⁴ "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."⁵

However, as petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. In that case, petitioner must explain his system for keeping track of patent matters - where he keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Notice of March 20, 2002, was not entered into

¹ In re Mattulath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

² See Haines, 673 F. Supp. at 317, 5 U.S.P.Q. 2d at 1132; Vincent v. Mossinghoff, 230 U.S.P.Q. 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 U.S.P.Q. 1091 (D.D.C. 1981); Potter v. Dann, 201 U.S.P.Q. 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

³ See MPEP 711.03(c) (II).

⁴ MPEP 711.03(c) (II) (emphasis added).

⁵ Id.

that system. The Office would like to see documentary evidence and records as may exist which would substantiate that petitioner exercised due diligence with respect to his most important business.

With regards to item (1), unfortunately, the declaration form supplied to petitioner did not include spaces for the inventor's residence, mailing address, and country of citizenship, which is required for compliance with 37 CFR 1.63. The Office apologizes for any confusion. The correct declaration form (PTO/SB/01) accompanies the present petition. Petitioner must submit this completed declaration form with any renewed petition.

Alternative Venue:

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of **unintentional** delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently \$665 for a small entity; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. A blank copy of the form for a petition under 37 CFR 1.137(b) is enclosed for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

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Office of Petitions

Enc: PTO/SB/01 (2 pages)
 PTO/SB/64 (2 pages)